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No. 71-904

In the

Supreme Court of the United States

OCTOBER TERM, 1971

GREAT FIDELITY INVESTMENT COMPANY, HAROLD HICKERSON, JAMES R. GARNER, DAVID LEE BAKER, ROBERT J. BUFORD, LEE R. BAKER, ROBERT O. HALL, LEON N. GILBERT, ERNEST C. HALL and W. PAUL KASPAREK,
Petitioners,

v.

M. F. MARTIN and CURTIS H. YOUNG,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Certain notes were assigned to Respondents who sued Petitioners thereon. The Trial Court allowed certain offsets asserted by Petitioners, but denied others, and entered judgment for Respondents, which judgment was affirmed by the Court of Appeals without opinion. (450 F. 2d 959).

ARGUMENT

Petitioners urge two points:

First, Petitioners contend that the judgment entered by the Trial Court, and affirmed by the Court of Appeals was erroneous. Petitioners' disappointment in the outcome of ordinary litigation involving notes and the amount of offsets allowed by the Trial Court is not a basis for granting a writ of certiorari by the Supreme Court.

Second, Petitioners contend that the Court of Appeals cannot affirm the Trial Court judgment by entering a judgment without opinion, in accordance with Rule 36 of Federal Rules of Appellate Procedure and local Rule 21 of the Fifth Circuit. Petitioners insist that in addition they are entitled to a written opinion from the Court of Appeals setting forth the basis for said affirmance.

There is no requirement that the Court of Appeals write a written opinion in every case, and a case such as this clearly illustrates the need and desirability of Rule 36, Federal Rules of Appellate Procedure, AND Rules by Courts of Appeals not inconsistent therewith. See Rule 47, Federal Rules of Appellate Procedure. An example of such a rule is Rule 21 of the Fifth Circuit. For similar rules see Rule 13(c) of the District of Columbia Circuit, and Rule 8 of the First Circuit. Obviously, Rule 36 of the Federal Rules of Appellate Procedure, which was promulgated by the United States Supreme Court, contemplates the entry of judgment in some cases, as was done in this case, by the Court of Appeals without an opinion setting forth the basis for its affirmance.

Petitioners do not have, and have not stated, any right, either by constitution, statute, or rule, entitling them to an opinion from the Court of Appeals in this case. Basically, Petitioners seem to be complaining of lack of due process and equal treatment in the proceedings which resulted in the Court of Appeals affirming a Trial Court judgment against them. Petitioners have been immersed in due process and equal treatment in connection with this case, which has now been pending for over three years. The following usual steps in Federal Procedure have been utilized:

1. Usual discovery by the parties, including oral depositions as well as written interrogatories.

2. A Pre-trial

3. Trial on the merits before the Court

4. Petitioners submitted a brief to the Trial Court after which the Trial Court entered judgment with Findings of Fact and Conclusions of Law.

5. Petitioners filed a Motion for New Trial supported by a brief and had a hearing and oral argument thereon.

6. Petitioners appealed to the Court of Appeals for the Fifth Circuit, filed their brief, and then a Reply Brief.

7. Petitioners were permitted oral argument before the Court of Appeals.

8. After the Court of Appeals affirmed the Trial Court, Petitioners filed a Petition for Rehearing accompanied by another brief and this was denied by the Court of Appeals.

CONCLUSION

Petitioners have not been denied due process or equal treatment, and they have not shown any reason why a writ of certiorari should be granted in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, JAMES OLCOTT PHILLIPS, Attorney for Respondents, do hereby certify that I have on this ..... day of February, 1972, duly served three copies of the foregoing Respondents' Brief In Opposition on the Petitioners by mailing true and correct copies thereof by Certified Mail, Return Receipt Requested, with postage prepaid, to their Attorney at the following address:

Mr. John B. Ogden
Suite 1412, City National Bank Tower
Oklahoma City, Oklahoma 73102

James Olcott Phillips
Attorney for Respondents